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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 44

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL., PETITIONERS,

vs.

HAYES FREIGHT LINES, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED APRIL 16, 1954
CERTIORARI GRANTED JUNE 7, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 697

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL., PETITIONERS,

vs.

HAYES FREIGHT LINES, INC.

No. 706

HAYES FREIGHT LINES, INC., APPELLANT,
LATHAM CASTLE, ATTORNEY GENERAL OF THE

vs.

STATE OF ILLINOIS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO AND ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

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IN THE SUPREME COURT OF ILLINOIS, MAY TERM, A. D. 1953

HAYS FREIGHT LINES, INC., Plaintiff-Appellant,

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, and Basil Wilson, States Attorney of Marion County, Illinois, Defendants-Appellees.

Appeal from Circuit Court, Marion County.

Honorable Ward P. Holt, Trial Judge.

Abstract of Record

IN CIRCUIT COURT OF MARION COUNTY

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION—Filed March 24, 1953

Now comes plaintiff Hayes Freight Lines, Inc. by Axelrod, Goodman & Steiner and Miller and Pfaff, its attorneys and respectfully states to the Court as follows:

1. This is a proceeding for declaratory relief under Chapter 110, Section 181.1, Illinois Revised Statutes for the purpose of determining a question in actual controversy between the parties hereto.

[fol. 7] 2. Plaintiff is an Illinois corporation organized and existing under the laws of the State of Illinois, on January 9, 1911, as successor in interest to the trucking business originally commenced by Iddo S. Hayes, in Mattoon, Illinois in 1887 and engages in the transportation of property by motor vehicle, as a common carrier, both in interstate commerce between points in various States as hereinafter set forth, and in intrastate commerce within several States, including the State of Illinois.

3. The State of Illinois has enacted legislation which is found in Chapter 95½, Section 228, Illinois Revised Statutes

which fixed a limitation upon the weight of trucks, trailers or other vehicles for the carriage of property upon the highways of the State of Illinois.

4. Chapter 95½, Section 229b, Illinois Revised Statutes, passed by the Legislature of the State of Illinois on July 11, 1951, provides, among other things:

(c) It shall be the duty of each state highway policeman arresting any person for having operated a vehicle in violation of the provisions of Section 131 of this Act (Chapter 95½, Section 228, Illinois Revised Statutes) to ascertain the make, motor number, serial number and registration and any other identification number of the vehicle having been operated in violation of said section and if the person so arrested was operating as the agent, servant or employee of any person, firm or corporation, the name and address of such person, firm or corporation. Upon the conviction of any person for having operated a vehicle in violation of the provisions of Section 131 of this Act, such policeman shall report, in writing, to the Director of the Department of Public Safety (1) the date of the offense, (2) the name and residence of the driver, (3) the county in which the offense was committed, (4) the court and date of the conviction, (5) [fol. 8] the amount of the fine imposed, (6) the make, motor number, serial number and registration and any other identification number of the vehicle so operated in violation of law and (7) if the person so convicted was the agent, servant or employee of another person, firm or corporation, the name and address of such other person, firm or corporation. The Director of the Department of Public Safety shall transcribe the same in the records of his office and shall send a copy of such written report by United States Mail to the person, firm or corporation in whose name the vehicle mentioned in such report is registered within five days after said name becomes known to the Director. The record of any such report so transcribed may be proved by a copy thereof certified under the hand of said Director. Any such certified copy shall be prima facie evidence of the facts therein set forth, transcribed from the report of the state highway policeman, as above provided.

(d) Whenever it shall come to the attention of the Director of the Department of Public Safety that a total of

ten convictions for violation of Section 131 of this Act have been entered during any twelve consecutive months period with respect to the operation of commercial vehicles operated by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, it shall be the duty of the Director of the Department of Public Safety to notify the Attorney General of such fact and it shall be the duty of the Attorney General to bring a proceeding in the name of the people of the State of Illinois to suspend the commercial vehicle operator's privilege of such commercial vehicle operator.

(e) Jurisdiction of such proceedings shall be in the Circuit Courts of the respective counties and the Superior Court of Cook County. The venue shall be in any county where any of the offenses referred to in Sub-section (c) of this section may have occurred or as provided in an Act of the General Assembly entitled, "An Act in Relation to [fol. 9] Practice and Procedure in the Courts of This State," approved June 23, 1933, as amended.

(g) The provisions of an Act of the General Assembly entitled, "An Act in Relation to Practice and Procedure in the Courts of This State" approved June 23, 1933, and all existing and future amendments of said Act and modifications thereof, and the rules now or hereafter adopted pursuant to said Act, shall apply to all proceedings hereunder, except as herein otherwise provided or except when inconsistent with the provisions of this Act.

Proof that a total of ten or more convictions for violations of Section 131 of this Act have been entered during any twelve months period with respect to the operation of one or more commercial vehicles by any one commercial vehicle operator, whether operated individually or through agents, servants or employees of such commercial vehicle operator, shall constitute prima facie evidence that such commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act. In any proceeding brought under this section, the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if

any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations.

(h) The papers, entries and records of the Secretary of State of this state, and of the officer of any other state in whose office any such commercial vehicle may be registered, showing the ownership of any such commercial vehicle, may be proved by a copy thereof, certified under the hand of the Secretary of State of this state, or of said officer of such other state. Any such certified copy, when admitted in [fol. 10] evidence, showing ownership of a commercial vehicle in a person of the same name as the defendant shall be prima facie evidence that the defendant is or was the owner of such commercial vehicle.

(i) Whenever the court shall find from the evidence that a commercial vehicle operator has habitually operated a commercial vehicle or more than one commercial vehicle in violation of Section 131 of this Act, it shall enter an order suspending the commercial vehicle operator's privilege of such commercial vehicle operator for a period of 90 days.

If at any time thereafter in another proceeding brought under this section, the court shall find from the evidence that a commercial vehicle operator has again habitually operated in violation of Section 131 of this Act, it shall enter a similar order of suspension except that the court shall suspend the commercial vehicle operator's privilege of such commercial vehicle operator for a period of one year.

5. In Case No. 52-13, pending in the Circuit Court of Marion County, Illinois, the People of the State of Illinois, *Ex Rel.* the Attorney General of the State of Illinois has filed a complaint against plaintiff herein alleging 157 violations of Chapter 95½, Section 228, Illinois Revised Statutes, 1951 to suspend for a period of 90 days, its commercial vehicle operator's privilege, pursuant to Chapter 95½, Section 229 (b), Illinois Revised Statutes, 1951.

Plaintiff herein has been informed, and on information and belief states the fact to be, that the State of Illinois, through its proper representatives (the Attorney General

of the State of Illinois and the States Attorney of Marion County, Illinois) is about to proceed to file another action alleging 144 additional violations of Chapter 95½, Section 228 against plaintiff in Marion County, Illinois pursuant to the aforesaid Section 229 (b), Chapter 95½, Illinois Revised Statutes seeking to suspend plaintiff's commercial vehicle [fol. 11] operator's privilege for a period of either 90 days or one year.

Plaintiff herein alleges that during the period of time covered by the complaint now pending in the Circuit Court of Marion County, Illinois, its vehicles operated approximately 60,000 vehicle trips over the highways of the State of Illinois; that during said same period, its vehicles traversed approximately 90,000,000 miles over the highways of the state of Illinois; that during said same period, it transported approximately 7,500,000 pounds of property daily over the highways of the State of Illinois; and that none of the 157 violations complained of, except 2, involves "gross" overloads (in that the maximum did not exceed 59,000 pounds as allowed under the provisions of Chapter 95½, Section 228, Illinois Revised Statutes 1951) as distinguished from "axle" overloads, resulting from the shift of cargo during the course of the operations of said motor vehicles.

6. In the conduct of its business as a common carrier, plaintiff operates 1929 motor vehicles; employs 2059 persons, of which 736 are utilized in its operation conducted within the State of Illinois in both inter- and intrastate commerce, and maintains terminals at Akron, Ohio, Cincinnati, Ohio, Cleveland, Ohio, Columbus, Ohio, Detroit, Michigan, Evansville, Indiana, Fort Wayne, Indiana, Hopkinsville, Kentucky, Indianapolis, Indiana, Lafayette, Indiana, Lexington, Kentucky, Louisville, Kentucky, Memphis, Tennessee, Milan, Tennessee, Muncie, Indiana, Nashville, Tennessee, Paducah, Kentucky, Pittsburgh, Pennsylvania, St. Louis, Missouri, Terre Haute, Indiana, Toledo, Ohio, Canton, Ohio, Hamilton, Ohio, Washington, Pennsylvania, Steubenville, [fol. 12] Ohio and Whiting, Indiana and Benton, Chicago, Danville, Joliet, Mattoon, Peoria, Quincy, Rock Island and Springfield, Illinois.

7. In the conduct of its business as a common carrier of property, transporting general commodities by motor

vehicle in interstate commerce, plaintiff conducts its operation under a certificate of public convenience and necessity issued to it by the Interstate Commerce Commission under Docket No. MC—42329. Said certificate authorizes and plaintiff conducts operations thereunder between various important and strategic points in the States of Illinois, Indiana, Iowa, Missouri, Kentucky, Tennessee, Ohio, Michigan, Pennsylvania and West Virginia. Plaintiff is also authorized to and transports property by motor vehicle in intrastate commerce within the State of Illinois as a line-haul carrier pursuant to a certificate of public convenience and necessity issued to it under L. H. 94, granted by the Department of Public Works and Buildings, Division of Motor Carriers. Said Certificates of public convenience and necessity issued to plaintiff by both the Interstate Commerce Commission and the Department of Public Works and Buildings, Division of Motor Carriers, cover operations conducted by plaintiff for a long period prior to the effective dates of the "grandfather" clauses of both the Interstate Commerce Act, enacted in 1935 and the Illinois Truck Act, enacted in 1939.

8. In the conduct of its business as a common carrier of property by motor vehicle, in both interstate and intrastate commerce, plaintiff serves approximately 1035 cities, villages and communities in the State of Illinois and 2500 cities, villages and communities in the other States in which it operates, some of which are solely dependent upon it for [fol. 13] their common motor carrier service. Among other things, plaintiff transports in interstate commerce, over the highways of the State of Illinois, dangerous explosives for the United States Government, covering movements under seal wherein the United States is both the shipper and consignee of the cargo involved, having handled a substantial amount of that kind of traffic, in furtherance of the defense effort. Among other things, plaintiff, under contract with the United States Post Office Department, operates over the highways of the State of Illinois in the performance of a postal service, handling United States mail over various routes between, among other places, Sparta, Illinois, and St. Louis, Missouri.

9. In the conduct of its business as a common motor carrier, plaintiff has certain fixed obligations with respect

to payments due on mortgages in the amount of $185,517.56 per annum, and rentals for terminals in the amount of $233,799.67 per annum, obligations covering payments for its motor vehicle equipment amounting to $1,088,722.10 per annum, tires and gasoline, amounting to $831,966.96 per annum and its payroll obligations to its employees, amount to $8,834,667.00 per annum. Its investment in terminal facilities and motor vehicle equipment used in the conduct of its operation in Illinois both in inter- and intrastate commerce, amounts to approximately $2,856,536.76 and its investment in terminal facilities and motor vehicle equipment used in the conduct of its operations in the other States in which it operates amounts to $2,757,034.15.

10. Plaintiff alleges and requests the Court to find that the provisions of Chapter 95½, Illinois Revised Statutes, Paragraph 229 (b) violate the Constitution of the State of Illinois and the Constitution of the United States of [fol. 14] America and are illegal, unconstitutional and void in the following respects, among others:

(a) Section 229 (b) deprives plaintiff of its property rights without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States, which provides:

"* * * No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Section 229 (b) also deprives plaintiff of its property rights contrary to Article II, Section 2 of the Constitution of the State of Illinois, which provides:

"No person shall be deprived of life, liberty or property, without due process of law."

Said statute is unconstitutional in that it is vague, ambiguous and indefinite in that it does not set forth with sufficient certainty standards or guides by which the Court can determine that a commercial vehicle operator has habitually operated commercial vehicles in violation of

Section 131 of the Uniform Act Regulating Traffic on Highways, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States and Article II, Section II of the Constitution of the State of Illinois of 1870.

In addition thereto said Section is unconstitutional for the reason that the test set forth therein, namely, 10 convictions during any 12 consecutive months' period bears no reasonable relation to the number of vehicle trips, the miles traversed, or the cargo transported, and discriminates against those operators whose commercial vehicles may make many, frequent and continuous trips as distinguished from occasional and casual users of the public highways. [fol. 15] The imposition of the penalty provided for is unconstitutional for the reason that it provides for an arbitrary, discriminatory, unreasonable and oppressive test upon which to base a suspension of commercial vehicle operating rights and thus deprive plaintiff of its property without due process of law, and denies to it equal protection of the laws in contravention of the Fourteenth Amendment of the Constitution of the United States and Article II, Section II of the Constitution of the State of Illinois of 1870.

(b) Section 229 (b) violates Article II, Section II of the Constitution of the State of Illinois, 1870, which provides in part as follows:

"All penalties shall be proportioned to the nature of the offense. * * *"

Said Section 229 (b) is unconstitutional in that it provides for an unreasonable, oppressive, arbitrary and confiscatory penalty which is not proportioned to the alleged offense.

(c) Section 229 (b) constitutes an unreasonable and undue burden upon interstate commerce in violation of Article I, Section 8, of the Constitution of the United States, which grants to Congress the exclusive power to regulate commerce among the several states and which provides:

"The Congress shall have power * * * to regulate commerce among the several States * * *."

Only the Interstate Commerce Commission, pursuant to the provisions of Part II of the Interstate Commerce Act,

particularly under 49 U. S. C. A. Section 312 (a) has the power to suspend plaintiff's operations under the operating rights granted to plaintiff under Certificate of Public Convenience and Necessity No. MC-42329. Said Section 312 (a) [fol. 16] provides that certificates, permits and licenses shall be effective from the date specified therein and shall remain in effect until suspended or terminated as therein provided.

If plaintiff's commercial vehicle operating privilege should be suspended in this proceeding so that its vehicles could not traverse the highways of the State of Illinois, the service which defendant as a common carrier is required to provide and perform for the general public under its interstate operating rights would be terminated not only at points in the State of Illinois but also in fact in the various other cities and towns of the other States which plaintiff services in interstate commerce, as aforesaid.

Under the certificate granted to it by the Interstate Commerce Commission, said Commission has complete jurisdiction over its operations and plaintiff is obligated as a common carrier to render regular, continuous and adequate service to the general public as is required of it by 49 U. S. C. A. Section 304 (a) (1) wherein it is provided that:

"It shall be the duty of the Commission to regulate common carriers by motor vehicle as provided in this chapter, and to that end the Commission may establish reasonable requirements with respect to continuous and adequate service * * *."

(d) Said Section 229 (b) violates the Constitution of the State of Illinois of 1870, which provides in Article III thereof that:

"The powers of the government of this State are divided into three distinct departments—the legislative, executive and judicial; and no person, or collection of persons, being one of those departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

[fol. 17] The intrastate operating rights granted to plaintiff by the Department of Public Works and Buildings, Division of Motor Carriers of the State of Illinois were

granted to it pursuant to the provisions of The Illinois Truck Act. Said Act provides for proceedings to insure compliance with law including, among others, Chapter 95½, Section 228, Illinois Revised Statutes, 1951, and for the suspension, amendment and revocation of such operating rights (Chapter 95½, Sections 263, 277, Illinois Revised Statutes, 1951). Only the Department of Public Works and Buildings, Division of Motor Carriers which granted the rights in the first instance may suspend them or initiate suspension proceedings. In any event, suspension of such rights by a court would violate Article III of the Constitution of the State of Illinois of 1870.

11. The business conducted and operated by plaintiff as a common carrier of general commodities constitutes a very valuable property right and demands for its continuous existence that a regular and uninterrupted service be performed by it for the shipping and receiving public, both in the State of Illinois and in the various States in which it is authorized to operate and serve, in both interstate and intrastate commerce. If plaintiff's commercial vehicle operator's privilege were to be suspended for a period of either 90 days or one year, it may cause financial ruin and bankruptcy to plaintiff because of its inability to provide and render service over the highways of Illinois, in both interstate and intrastate commerce. Approximately 62½% of all of plaintiff's operations in interstate commerce, either originate at points in Illinois or are destined to points in Illinois, or must of necessity be handled in operations involving trips traversing the highways of the State of Illinois.

[fol. 18] If plaintiff were prohibited from operating over the Highways of the State of Illinois for either a period of 90 days or for one year, it would be compelled to release a very substantial number of its experienced and valuable personnel, a large number of whom have been continuously employed for many years, full well knowing that such employees would necessarily have to obtain gainful employment elsewhere, so that they would not return at a later date to plaintiff, or in the alternative, plaintiff would be compelled to pay such employees even though they were not working.

At the same time, plaintiff would be compelled to meet its various enumerated fixed financial obligations, as more particularly set forth hereinbefore, or, being in default, lose valuable properties and rights. Further, plaintiff's credit standing may be irreparably damaged, its assets would be dissipated, and, in addition, it would lose the valuable patronage of its customers acquired as a result of long and established service and good will, to its complete and irreparable damage.

12. Defendants, Latham Castle, Attorney General of the State of Illinois, and Basil Wilson, State's Attorney for Marion County, Illinois, and each of them, are charged separately, by law, with the duty of enforcing Chapter 95½ Section 229 (b) Illinois Revised Statutes, 1951, referred to herein, and unless each of them is separately restrained from bringing any proceeding to suspend plaintiff's commercial operator's privilege pursuant to said Section 229 (b) plaintiff will suffer irreparable damage.

13. In addition to the suit presently pending against plaintiff, there are presently pending approximately forty other complaints filed by the People of the State of Illinois in various Circuit Courts in the State of Illinois, against [fol. 19] other motor common carriers, under which the commercial vehicle operator's privilege of said motor common carriers are also sought to be suspended for periods of 90 days each. In said forty other complaints, defendants therein have raised substantially the same legal defenses as would be involved in the determination of the issues raised by this complaint seeking for determination the invalidity of the statute involved herein.

14. Plaintiff herein seeks a determination of the constitutionality of Chapter 95½ Section 229 (b), Illinois Revised Statutes, 1951, as alleged in Paragraph 4 of this complaint, and such a determination will obviate and avoid a multiplicity of said pending suits, and in addition, suits threatened to be filed by the defendants against other additional common carriers which upon information and belief are about to be filed.

Wherefore, plaintiff prays for declaratory judgment under the terms and provisions of Chapter 110, Section 181.1 Illinois Revised Statutes, 1951, declaring that Chapter 95½,

Section 229 (b) paragraphs (d), (e), (g), (h) and (i), Illinois Revised Statutes, 1951 be held unconstitutional and void and that said Paragraphs (d), (e), (g), (h) and (i) of said Section 229 (b) be held for naught; that the defendants and each of them and their successors in office be permanently restrained and enjoined by the order of this Court from instituting further proceedings to suspend plaintiff's commercial motor vehicle operator's privileges for violation of Chapter 95½ Section 228, Illinois Revised Statutes, 1951 in the Circuit Court of Marion County, Illinois or any other Court in the State of Illinois.

[fol. 20] In the Circuit Court of Marion County

Plaintiff prays for such other and further relief as this Court may deem just and proper in the premises.

Hayes Freight Lines Inc., by Axelrod, Goodman & Steiner, Its Attorneys.

Filed for record March 24, 1953. Wesley Griffin, Circuit Clerk, Marion County, Ill.

Motion to Dismiss and for Judgment—Filed March 24, 1953

Defendants, Latham Castle, Attorney General of the State of Illinois, and Basil Wilson, State's Attorney of Marion County, in their own proper person, and by John L. Davidson, Jr., First Assistant Attorney General, move the court to dismiss the Complaint of plaintiff for failure to state a cause of action and for want of equity, and pray for judgment that paragraphs (d), (e), (g), (h) and (i) of Section 229(b), Chapter 95½, Illinois Revised Statutes, 1951, be held constitutional and in full force and effect and decree that the plaintiff's complaint be dismissed for want of equity at the plaintiff's cost.

Latham Castle, Attorney General of the State of Illinois, and Basil Wilson, State's Attorney of Marion County, Defendants, By John L. Davidson, Jr., First Assistant Attorney General.

[fol. 21] In the Circuit Court of Marion County

Order of Dismissal—March 30, 1953

This matter coming on to be heard on the complaint of plaintiff and on the motion of the defendants for to dismiss said complaint, and for judgment and decree, and all parties appearing by counsel, and the court being fully informed in the premises Finds:

1. That the court has jurisdiction of the subject matter and of the parties hereto.
2. That said complaint fails to state a cause of action.
3. That sub-paragraphs (d), (e), (g), (h) and (i), Section 229(b), Chapter 95½, Illinois Revised Statutes, 1951, are constitutional and in full force and effect.
4. Said complaint should be dismissed for want of equity.

It is therefore ordered, adjudged and decreed that the plaintiff declining to plead further, its complaint herein be, and the same is hereby dismissed, and that the defendants and each of them go hence without delay.

Enter: Ward P. Holt, Judge.

Minute Entry of Notice of Appeal—Filed March 30, 1953

Notice of appeal and proof of service thereof, filed March 30, 1953.

Praecipe for record and proof of service thereof filed March 30, 1953.

Alexrod, Goodman & Steiner, Attorneys for Plaintiff-Appellant.

[fol. 22] In The Supreme Court of Illinois

[Title omitted]

Argument and Submission of Cause—May 22, 1953

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with

printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgment and for costs procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause having been argued orally by David Axelrod for appellant and by John L. Davidson, Jr. and Mark O. Roberts for appellees is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 23] IN THE SUPREME COURT OF ILLINOIS

Appeal from Circuit Court Marion County

No. 32855

HAYES FREIGHT LINES, INC., APPELLANT

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, and BASIL WILSON, State's Attorney of Marion County, Illinois, APPELLEES.

OPINION—September 24, 1953

[fol. 24] Docket No. 32855—Agenda 44—May, 1953.

Mr. CHIEF JUSTICE SCHAEFER delivered the opinion of the court:

Section 132.02 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, chap. 95½, par 229b,) provides for suspension of the privilege of operating a commercial vehicle upon the highways when habitual operation in violation of the maximum weight and load limits fixed by section 131 of the act (Ill. Rev. Stat. 1951, chap. 95½, par 228,) is established. Plaintiff filed a complaint in the circuit court of Marion County in which it alleged that an action had been

brought in that court charging plaintiff with 157 violations of section 131, and seeking to suspend its commercial operator's privilege for ninety days. On information and belief, plaintiff also alleged that a second such action was about to be instituted to suspend its privilege for either ninety days or one year because of 144 additional violations. Asserting that the suspension provisions violate the State and Federal constitutions in respects which will be discussed, plaintiff sought a declaratory judgment that they are invalid, and an injunction to restrain the defendants, the Attorney General and the State's Attorney of Marion County, from proceeding further against the plaintiff. The circuit court found the suspension provisions valid, granted defendants' motion to dismiss the complaint, and entered an order of dismissal against the plaintiff, who appeals directly to this court.

The complaint alleges that the plaintiff is a corporation engaged in the transportation of property by motor vehicle as a common carrier, both in interstate and intrastate commerce. It operates 1929 motor vehicles, employs 2059 persons, of whom 736 are utilized in its Illinois operations, and maintains terminals at thirty-five cities in eight States. It conducts interstate operations in ten States, including Illinois, under a certificate of public convenience and necessity issued to it by the Interstate Commerce Commission. It also operates in intrastate commerce within Illinois as a line-haul carrier, pursuant to a certificate of public convenience and necessity issued by the Division of Motor Carriers of the Department of Public Works and Buildings.

It is also alleged that during the time covered by the complaint in the suspension proceeding, plaintiff's vehicles [fol. 25] operated approximately 60,000 vehicle trips over the highways of the State, traveling a total of 30,000,000 miles, and transporting daily 7,500,000 pounds of property, and that only two of the 157 violations charged involved "gross" overloads, as distinguished from "axle" overloads resulting from the shift of cargo during the course of operation of the vehicles.

Plaintiff further alleges that its business as a common carrier constitutes a valuable property right which requires, for its continuous existence, that a regular and uninter-

rupted service both in interstate and in intrastate commerce be performed, and that a suspension of its service for either ninety days or one year may result in financial ruin.

Section 132.02 alone is attacked here. Plaintiff concedes the validity of section 131, and of section 132.01 (Ill. Rev. Stat. 1951, chap. 95½, par. 229a,) which provides a schedule of fines, graduated according to the amount of excess weight, for violation of section 131.

Subsection (b) of section 132.02, which was added to the act in 1951, provides that the privilege of a commercial vehicle operator to operate upon the highways shall be suspended when he shall "habitually operate" in violation of the maximum load and weight limits of section 131. The "commercial vehicle operator's privilege" is defined by section 132.02(a)(3) as "the privilege, recognized or conferred by any law of this state, of any person * * * to operate * * * commercial vehicles * * * upon the public highways of this state." Section 132.02(c) provides that upon conviction of any person for a violation of section 131 the arresting officer shall report the circumstances of the arrest to the Director of the Department of Public Safety, who is required to mail a copy of the report to the person in whose name the offending vehicle is registered. Section 132.02(d) provides that the Director of the Department of Public Safety shall notify the Attorney General whenever a total of ten convictions has been entered during any twelve months' period with respect to vehicles operated by any one operator. It then becomes the duty of the Attorney General to bring a proceeding to suspend the operator's privilege. By subsection (e), the circuit courts and the superior court of Cook County are given jurisdiction of suspension proceedings.

Subsection (g) provides that proof of a total of ten or more convictions for violation of section 131 during any twelve months' period by any one operator constitutes [fol. 26] *prima facie* evidence that the operator has habitually operated in violation of section 131. Subsection (g) further provides that "the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary,

if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations."

Subsection (i) provides that whenever the court shall find from the evidence that an operator has habitually operated one or more commercial vehicles in violation of section 131, it shall enter an order suspending the operator's privilege for a period of ninety days. If at any time thereafter, in another suspension proceeding, the court shall find that the operator has again habitually operated in violation of section 131, it shall enter a similar order of suspension for a period of one year. An order of suspension is enforceable by contempt proceedings, (subsection (j),) and operation after suspension is a misdemeanor (subsection (l).)

The plaintiff contends that section 132.02 is invalid under the Federal and State constitutions. The Federal grounds relied upon are the due process, equal protection, commerce and supremacy clauses. The State grounds are the due process and separation of powers clauses, and the requirement of section 11 of article II that all penalties be proportioned to the offense. We shall defer consideration of the contentions raised under the commerce and supremacy clauses of the Federal constitution until the other issues have been discussed.

Statutory provisions for suspension or revocation of licenses of all types upon proof of violation of law are so familiar as not to warrant citation. In the motor vehicle field, the Illinois provision for revocation of the ordinary driver's license for specified statutory violations (among them three convictions for violation of speed limits) (Ill. Rev. Stat. 1951, chap 95½, par. 35j,) is typical of provisions which are uniformly regarded as permissible regulations of the use of the highways. (*People* v. *Kobylak*, 383 Ill. 432; *In Re Probasco*, 269 Mich. 453, 257 N.W. 861; *Commonwealth* v. *Harris*, 278 Ky. 218, 128 S.W. 2d 579; *LaPlante* v. [fol. 27] *State Board*, 47 R. I. 258, 131 Atl. 641; *Commonwealth* v. *Funk*, 323 Pa. 390, 186 Atl. 65; *Prichard* v. *Battle*, 178 Va. 455, 17 S.E. 2d 393.) That such provisions generally aim to foster public safety, while the primary bear-

ing, at least, of the present provision is the protection of the highways from abuse by excessively heavy loads, cannot be a material difference. Plaintiff would also distinguish these cases on the ground that the suspension here "is directed precisely to a prohibition upon the right to engage in a lawful business." But one who uses the public highways for the conduct of his business certainly cannot claim a preferred position. *Bode* v. *Barrett*, 412 Ill. 204; *Weksler* v. *Collins*, 317 Ill. 132.

Plaintiff, however, asserts that that portion of section 132.02(g) which requires the court to consider evidence relating to the character and gravity of the violations and the extent of the operations of the defendant in determining whether there has been habitual operation in violation of the act fails to provide a "reasonable ascertainable standard" and therefore violates both due process and the separation of powers required by article III of the constitution of Illinois. Insofar as the suspension provision is conditioned upon the occurrence of a statutory offense, there is, of course, no question of indefiniteness, for the statutory maximum weight and load limits are expressed in precise units of physical measurement, but it is argued that the terms "character" and "gravity" lack precision, and that they afford no standard by which an operater who has been convicted of a violation of a statutory load limit can tell whether that violation falls "within or without the type of violation for which an operator's privilege may be suspended." As to the factor of "extent of operations," which the plaintiff describes as the "percentage relationship of violations to non-violations," it is said that no measure is prescribed for either the court "or the operator to adjudge or determine that distinctive percentage which falls within the prohibited category, and that which falls without it." In support of this argument plaintiff relies upon *Connally* v. *General Construction Co.*, 269 U. S. 385; *Small Company* v. *American Sugar Refining Co.*, 267 U. S. 233; *United States* v. *Capital Traction Co.*, 34 App. D. C. 592, and other cases in which statutes have been invalidated for want of definiteness.

Neither proposition is sound. It may be conceded, as the plaintiff suggests, that the standards provided do not per- [fol. 28] mit an operator to know in advance whether or

not his conduct, admittedly in violation of the law, will be determined to warrant a finding that he has habitually operated in violation of the act with resulting suspension. From the point of view of the operator it would obviously be desirable to know the precise conditions under which he may violate the law without incurring the risk of suspension of his license. But the desire of the operator is not equivalent to a command of the constitution. Many years ago it was pointed out that "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." Mr. Justice Holmes in *Nash* v. *United States*, 229 U. S. 373, 377.

The General Assembly is not required to establish an absolute criterion for the revocation of this privilege. It may concern itself with the quality of the conduct which is the basis of revocation. It might express that concern by attempting to enumerate all the conditions of weather, roads, and loads, and the myriad of transitory circumstances peculiar to the business of the offending carrier or to the offense which might be relevant by way of excuse or justification. But no constitutional provision requires it to do so as long as intelligible standards are established to be applied by the agency to which the determination is committed.

While the standards here fixed are expressed in general terms, they deal unmistakably with the quality of the conduct which is made the basis of suspension of the privilege. They include factors relating to the deliberate, negligent, or excusable quality of the violations which are relied upon as a basis for revocation. In this we see no constitutional defect.

The plaintiff also contends that the determination of whether or not there has been operation in habitual violation, and hence of whether or not the privilege to operate should be suspended, is so inherently an administrative function that it cannot, under article III of the constitution, be committed to a court. In support of this argument plaintiff relies on *Borreson* v. *Department of Public Welfare*, 368 Ill. 425. The statute in that case required the court, on an appeal from an administrative agency, to determine *de novo* the amount to be paid to aged persons for old-age

assistance, and it was held that the function was administrative, and could not validly be committed to a court. The determinations involved in the present case, however, are [fol. 29] of the kind which has traditionally been considered judicial. The application of generalized standards—negligence, malice, fraud, and a host of others—to particular conduct was the routine business of the courts long before administrative agencies, as we know them now, came into existence. The issues in a suspension proceeding bear a marked resemblance to the issues which courts decide daily in the administration, for example, of statutes providing for probation and indeterminant sentences. And since the procedure in suspension proceedings is governed by the Civil Practice Act, and an order of suspension is enforceable by contempt, the analogy to injunction is obvious. We hold, therefore, that section 132.02 does not violate the provisions of article III.

Plaintiff also attacks the provision that proof of ten or more convictions for violation of the load limits within twelve months shall constitute *prima facie* evidence of habitual operation in violation of the act. It is contended that this provision discriminates unreasonably against one who operates numerous vehicles on frequent trips and in favor of one who operates fewer vehicles and less frequently. Because a *prima facie* case of habitual operation in violation of the statute may be established against operators whose ratio of unlawful to lawful operations is substantially different, it is urged that the statute creates a discrimination which is invalid under the equal protection clause of the fourteenth amendment.

The argument is not impressive. We are aware of no constitutional provision which would invalidate an absolute rule of suspension for specified violations. Provisions for the suspension or revocation of drivers' licenses for specified violations of law are commonplace. And the fact that these provisions do not take into account the number of miles driven by the respective violators has not, so far as we are aware, been thought to invalidate them. Plaintiff's argument does no more than underscore the wisdom of the authorized inquiry into the circumstances of the violations, an inquiry which the plaintiff elsewhere in its argument so vigorously attacks.

Plaintiff next argues that the *prima facie* test violates due process because an operator may be faced with the burden of defending against a succession of suspension proceedings involving identical violations. It is suggested that an operator who has ten or more violations during a twelve-month period may be found, in view of all the circum- [fol. 30] stances, not to have operated in habitual violation of the law. Upon further convictions for violation of the load limits during the same twelve-month period, a second action under section 132.02 might be instituted and might result in the suspension of such an operator's privilege. The second suspension proceeding is occasioned, however, by the operator's continued conduct, which results in additional violations. Since these additional convictions tend to cast new light on the overall character of his operations, a re-examination of the charge of habitual violation is justified, and in such a re-examination there is no deprivation of due process.

It is also contended that the statute is fatally unreasonable in that it permits inclusion, in the ten offenses which make up a *prima facie* case, of violations due to "axle overloads," which may have been unavoidable. The argument is based upon the fact that section 131 recognizes a category of "unavoidable" axle overloads which are punished by a nominal fine of one dollar. Apart from the fact that the complaint does not allege that any of the violations with which plaintiff is charged are of this character, the contention must fail. There is no basis for assuming that any court would refuse, in a suspension proceeding, to take into account a previous judicial determination that abnormal and unanticipated conditions made it impossible to prevent undue shifting of a particular load. Indeed, such a circumstance would seem to be peculiarly within the authorized scope of inquiry into the "character" of the violation.

It is said that the penalty of suspension of operating privileges is so disproportionate to the offense as to deprive the plaintiff of due process of law and to contravene section 11 of article II of the constitution of Illinois which provides: "All penalties shall be proportioned to the nature of the offense * * *." We do not agree. The State's continuing search for effective enforcement techniques to secure compliance with valid weight limits is apparent in

the legislation dealing with the subject. (See: Act of July 9, 1935, secs. 132, 135, 137, Laws of 1935, p. 1281 ff.; Act of August 6, 1949, secs. 1, 2, 3, Laws of 1949, p. 1142; Act of August 10, 1949, secs. 132, 132.01, Laws of 1949, p. 1156; Act of August 6, 1951, sec. 132.01, Laws of 1951, p. 2090.) The General Assembly might infer that the truckers find the payment of statutory penalties when violation is established to be economically preferable to compliance. But the State is entitled to insist upon compliance with its valid [fol. 31] regulations, and to shape its penalties to that end. Consideration stemming from the commerce clause of the Federal constitution apart, we see no reason why the State may not restrict the privilege of using its highways for profit to those who comply with its laws. If, because of the peculiarities of a particular load, compliance would present inordinate difficulties, provision is made for a permit to exceed the statutory limits. Ill. Rev. Stat. 1951, chap. 95½, par. 230.

We think the sanction imposed here is not disproportionate to the offense. We have previously sustained acts which impose analogous auxiliary penalties such as the confiscation of a vehicle or prohibition of the use of a building, (*People* v. *Kawoleski*, 310 Ill. 498,) as well as acts imposing progressively severer penalties for repeated offenses. (*Kelly* v. *People*, 115 Ill. 583.) *Chicago and Alton Railroad Co.* v. *People ex rel. Koerner*, 67 Ill. 11, on which plaintiff relies, is not authority to the contrary, for we recognized there the propriety of forfeiture in cases of successive violations.

Plaintiff's final contention is that the suspension provisions are invalid under the commerce clause and the supremacy clause of the Federal constitution. While it is conceded that the State has broad powers over the use of its highways in interstate commerce, it is argued that the power of the State does not include the suspension, even for a limited period of time, of the right to engage in interstate commerce, particularly in the case of carriers who hold certificates of convenience and necessity under the Federal Motor Carrier Act. Because the issue presented lies within a sensitive area of State and Federal relations, we have carefully examined the statute to be sure that it was intended to apply to interstate commerce. Its scope is fixed

by the definition of "commercial vehicle operator's privilege" as "the privilege recognized or conferred by any law of this state * * * to operate * * * commercial vehicles * * * upon the public highways of this state." A privilege or right to operate motor vehicles for commercial purposes in interstate commerce is clearly recognized in other statutes. (Ill. Rev. Stat. 1951, chap. 95½, par. 220.13, par. 243.) From this fact, and from the fact that section 132.02 itself does not itself suggest any exemption of operators engaged in interstate commerce, we conclude that the suspension procedure was intended to apply to all operators whether engaged in interstate or intrastate [fol. 32] commerce.

The power of the State over those who use its highways in interstate commerce is extensive. It may prescribe the maximum size and weight of vehicles engaged in interstate commerce, (*South Carolina State Highway Dept.* v. *Barnwell Bros.* 303 U.S. 177,) it may regulate their design, (*Maurer* v. *Hamilton*, 309 U.S. 598,) and it may impose nondiscriminatory fees. (*Hendrick* v. *Maryland*, 235 U.S. 610; *Kane* v. *New Jersey*, 242 U.S. 160.) The suspension provision here involved, however, extends beyond the areas which have been held permissible in the decided cases. The plaintiff has been granted a right to engage in commerce on the highways of Illinois by the Interstate Commerce Commission, acting under part II of the Interstate Commerce Act. (49 U.S.C. sec. 301 ff.) It is that right which is to be suspended under section 132.02.

We are aware of no case which involves the validity of a sanction of this type as applied to interstate motor carriers. In other situations, however, such sanctions have been invalidated under the commerce clause, even though the regulation to which the sanction attached was within the power of the State. So it has been held that payment of a tax otherwise valid may not be made a condition precedent to the right to carry on interstate business, but that enforcement must be left to ordinary collection procedures. (*Postal Telegraph Cable Co.* v. *Adams*, 155 U.S. 688.) Nor may nonpayment of an otherwise valid tax be made the basis of a forfeiture of a corporate franchise to engage in interstate commerce. (*St. Louis Southwestern Railway Co.* v. *Arkansas*, 235 U.S. 350.) In *Hill* v. *Florida*, 325 U.S. 538,

a union business agent who had failed to secure a license required by State law was enjoined from acting as a business agent. The court held that his right to act in that capacity was conferred by the National Labor Relations Act, and that the right so granted could not be obstructed by injunction or by penalty for acting without a license. "It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining." 325 U.S. 538, 543.

In our opinion, the sanction provided in section 132.02 operates directly to restrict a right which the Federal government has granted to engage in interstate commerce, and it is therefore invalid under the commerce clause.

Th fact that the federally granted right of an operator [fol. 33] to engage in interstate commerce cannot be suspended does not, however, impair the validity of section 132.02 as applied to intrastate operations. The continuing power of the State over those operations is expressly recognized by Congress. (49 U.S.C. sec. 302(b).) The statute can operate effectively if its application is restricted to intrastate commerce. And even apart from the separability clause of the statute, (Ill. Rev. Stat. 1951, chap. 95½, par. 239,) section 132.02 itself indicates the intention of the General Assembly to exert the full measure of its power to secure compliance with its valid regulations.

It follows that the decree of the circuit court must be reversed, and the cause remanded, with directions to enter a decree in accordance with this opinion.

(Reversed and remanded, with directions.

[fols. 34-36] IN SUPREME COURT OF ILLINOIS

No. 32855

HAYES FREIGHT LINES, INC., Appellant

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, and Basil Wilson, State's Attorney of Marion County, Illinois, Appellees

JUDGMENT—September 24, 1953

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error.

Therefore, it is considered by the Court that for that error and others in the record and proceedings aforesaid the decree of the Circuit Court of Marion County in this behalf rendered, be reversed, annulled, set aside and wholly for nothing esteemed, and this cause be remanded to the Circuit Court of Marion County with directions to enter a decree in accordance with the views expressed in the opinion attached to this mandate.

[fol. 37] [File endorsement omitted]

[fol. 38] In the Supreme Court of Illinois, May Term, A. D. 1953

[Title omitted]

Petition for Rehearing on Behalf of Appellant—Filed October 19, 1953

May it please the Court:

Appellant respectfully petitions for a rehearing in this cause for the reason that the Court in its opinion has misapprehended and overlooked certain principles of law in relation to the issues determined adversely to appellant, as follows:

[fol. 39] I

Penalty of Suspension as Violation of Federal and State Guarantees of Due Process and Article II, Section 2 of Constitution of Illinois

(*Appellant's Brief—Points V, A., B.*)

Appellant's brief, page 51, urges that a 90-day suspension of a commercial motor vehicle operator's privilege would destroy property rights of a value so excessive that it may cause its financial ruin and bankruptcy. The fact that the opinion denies the power to suspend interstate operating privileges of appellant in no way mitigates the severity of the penalty or the potential threat of bankruptcy because appellant's operations in intrastate commerce are extensive and its fixed obligations for mortgages, rental of terminals and equipment absolutely require the continued operation by appellant of both its inter- and intra-state business in Illinois (Appellant's Brief, page 51).

The opinion disposes of this issue on the ground that the Court has "previously sustained acts which impose *analogous* auxiliary penalties such as the confiscation of a vehicle or the prohibition of the use of a building (*People* vs. *Kowalski*, 310 Ill. 498) as well as acts imposing progressively severer penalties for repeated offenses (*Keely* vs. *People*, 115 Ill. 583)." The Court further disposes of the *Koerner* case, offered by appellant, as follows: "*Chicago and Alton Railroad Co.* vs. *People, Ex Rel. Koerner*, 67 Ill.

11, on which appellant relies, is not authority to the contrary, for we recognized there the propriety of forfeiture in cases of successive violations."

It is respectfully submitted that the cases offered by the Court in support of its analysis and decision are not "analogous" as the Court states, and that the Court has misapprehended or overlooked the principles therein enunciated.

[fol. 40] The *Kawolski* case sustained the Illinois Prohibition Act against a challenge that as it provided auxiliary penalties, such as the confiscation of a vehicle or the prohibition of the use of a building, in addition to the penalty, fine, or imprisonment, the Act violated Article II, Section 2 of the Constitution of Illinois, which requires penalties to be proportioned to the nature of the offense.

The power of the State to confiscate or condemn *property which is used in an illegal enterprise* may be conceded. That is the effect and the limitation of the *Kawolski* case. But in the case at bar, the suspension penalty required by Section 132.02 will result in the immobilization and suspension of the privilege of using property which has lawfully been operated in Illinois. It is not only the unlawfully operated vehicle which is barred from the highways, *but the vast number of vehicles which have not been involved in overweight infractions of the law.* The admitted facts are that during the period of operation by appellant under the pending prosecution in the Circuit Court of Marion County appellant engaged in approximately 60,000 vehicle trips over the highways of Illinois, resulting in 157 overweight violations of Section 131 (Abst. 6). The percentage of unlawful operations is approximately one-quarter of one percent. Approximately 99.75 percent of appellant's operations have been lawful, and in the conduct of those operations its terminals and docks and the great majority of its motor vehicles have not been operated illegally. Yet the suspension penalty in practical effect confiscates the property so lawfully used.

Surely it is not the position of the Court that the *Kawolski* case sanctions the appropriation, confiscation or forfeiture, directly or indirectly, as an auxiliary penalty, of property which has not been tainted by employment in an illegal enterprise. This would indeed be an extraordinary extension of

[illegible] concept of police power. This *Kowolski* case is not, [fol. 41] therefore, analogous, and the Court's reliance upon it as precedent is a misapprehension of the principles it expresses.

Keely v. *People*, 115 Ill. 583, relied upon by the Court is also not analogous or relevant. That case does sustain the legislative power to prescribe progressively severer penalties for repeated criminal offenses as provided under the Habitual Criminal Act. But the protection of society against the depredations of the arsonist, rapist, murderer or kidnapper is hardly the equivalent of the state's interest in the conservation of its highways. Nor does the state's power under the Habitual Criminal Act extent to the forfeiture of his property. Generations ago the abhorrent principle that convictions shall work a corruption of blood or forfeiture of estate was abolished from our Anglo-Saxon jurisprudence. Restraints upon the legislative power in this respect were incorporated into our fundamental law (Art. II, Sec. 2, Constitution of Illinois). And, although Section 132.02 does not theoretically violate this principle, is it not a violation of the spirit of that established guarantee when property rights valued in the millions may be rendered worthless, especially under circumstances when the property affected has not been employed in illegal activities?

The *Keely* case is not, therefore, analogous to the statute under consideration and its application to the case at bar is a misapprehension of the law.

In respect to *Chicago and Alton Railroad Co.* v. *People Ex Rel. Koerner*, 67 Ill. 11, heavily relied upon by appellant, the Court, in its opinion, briefly dismisses it as not being authority to the contrary, stating that "we recognized there the propriety of forfeiture in cases of successive violations." This conclusion, appellant respectfully suggests, misapprehends the Court's holding. The forfeiture provision, applicable to a first offense, is stricken down by the Court, [fol. 42] as an unconscionable penalty in violation of the spirit of Art. II, Sec. 2, the Court observing that in some cases this would amount to a fine of millions of dollars (Appellant's Brief, page 52). The decision may suggest, as this Court states, that it "recognized there the propriety of

forfeiture in cases of successive violations," but the case does not involve that issue and moreover, on its facts is not precedent for the suspension penalty provided in Section 132.02. The statute there under consideration authorized a forfeiture of franchise for a *willful* violation of its provisions. Section 132.02 authorized a suspension of operating rights for violations which may be wholly unavoidable, or merely negligent. The distinction is both evident and crucial, for whatever inference the *Koerner* case may give regarding the propriety of forfeiture in cases of successive violations it is a misapprehension of its intendment to suggest that the Court was giving its sanction to a forfeiture penalty heard upon other than willful violations of the law.

In this connection it is appropriate to advert to a misapprehension of the Court in its analysis of this issue. In its discussion of the State's continuing efforts to find effective enforcement techniques to secure compliance with valid weight limits, the Court in its opinion states:

> "The General Assembly might infer that the truckers find the payment of statutory penalties when violation is established to be economically preferable to compliance."

In indulging in this presumption the Court, it is respectfully submitted, is not utilizing authoritative evidence of legislative history for nowhere in the statute or in the Journal of Proceedings of the Illinois House and Senate, or in the records of the committees which considered this 1951 amendment is there any evidence or reference to support this conclusion of legislative judgment which the Court adopts. Nor does the record of this cause on review support [fol. 43] this conclusion; *on the contrary, it is wholly adverse to it.* Since the Court has suggested the factor of possible willful violations and thus introduced the element of intent of the trucker to violate the weight laws, a review of the record must in all fairness be had.

The record is clear and uncontroverted that of the 157 violations of Section 131 by appellant which form the basis of the prosecution in the lower court, only two involve "gross" overloads (Abst 6). The Court there inferred that truckers may prefer the fines incident to overweight viola-

tions rather than submit to compliance with the law. In effect it is suggested that as a matter of economies it may be wise for the truckers to deliberately violate Section 131 since the added revenues derived from the excess tonnage carried will more than offset the fines provided in Section 131. The argument has plausibility only in respect to "gross" overloads. Obviously axle overloads which do not involve gross overloads can in no way contribute to the inferred profit motive underlying deliberate violations. It is only by overloading a truck beyond its permissible gross load limits that a carrier can trade his integrity for a profit. Thus, the record before the Court which establishes that 155 out of 157 violations involved *only* axle overloads *negates the imputation of deliberate intent to violate the law as an economically preferable alternative to compliance.*

Moreover, on the issue of good faith or intent, the Court's attention is again invited to Exhibit B of Appellant's Brief, consisting of Report and Orders of the Interstate Commerce Commission, in which the Commission, in a contested proceeding, determined appellant to be a fit, willing and able operator for extended interstate operating authority. At page 95 of Appellant's Brief, the Commission considered appellant's record of overweight violations in Illinois and concluded as follows:

> "Except for overweight violations, applicant has a [fol. 44] good record in Illinois; and, as noted, these were axle overweights rather than excess gross tonnage violations. *There is plausibility, and possibly some merit, in applicant's contention that some of these violations were due to the shifting of cargo in transit;"* (Emphasis supplied.)

If further evidence be needed respecting the Court's misapprehension of the legislative purpose of Section 132.01 as applied to appellant's record in relation to the profit motive, it is again noted that out of 60,000 vehicle trips covering 9,000,000 miles traversed on Illinois highways, only 157 violations occurred, a violation ratio of approximately one-quarter of one percent (Abst. 6).

Appellant has felt constrained to emphasize this issue

because of its deep concern over the gratuitous assertion by the Court imputing to appellant (and other motor carriers) a policy of deliberate violation of law as a basis for its holding that the suspension penalty is not unconstitutionally harsh or oppressive. Appellant is only one of approximately 40 other motor carriers presently being prosecuted under the suspension provisions of Section 132.01 (Abst. 13). *Appellant is sincere in its conviction that it operates its business efficiently, with due regard to its public obligations.* It has every reason to believe that the operations of each of the other defendants in such pending actions are likewise being efficiently operated. Yet despite efficient management and conscientious efforts to comply with the weight laws, appellant and these other carriers, both large and small, have found it difficult to avoid overweight violations which subject them to the threat of involuntary bankruptcy through the application of the suspension provisions of Section 132.01. The statute thus imperils the existence of an entire industry which is essential to the welfare and progress of the people of this State.

[fol. 45] The State's interest in the conservation of its highways is undeniably important and in the adjustment of a balance between a lawful industry required to use the public highways and the legitimate interest of the State in conserving those highways, the reasonableness of the suspension penalty must be evaluated. Appellant contends that *a suspension penalty which virtually assures bankruptcy and which in effect is a forfeiture or fine of extraordinary proportions, is an unconscionable and excessive penalty and an arbitrary exercise of police power.*

Appellant asks: if Section 132.02, instead of providing a suspension penalty, required imposition of a fine of $1,000,000.00 upon conviction of 10 overweight violations, would this be a valid police regulation? It is respectfully submitted that such a statute would in all likelihood shock the conscience of the Court and be invalidated on due process grounds. Yet Section 132.02, in its present suspension provisions, does precisely this by indirection.

Finally, *Robison* v. *Miner*, 68 Mich. 549 (Appellant's Brief, p. 53), not noted by the Court in its opinion, deserves re-mention. In holding invalid a statute which provided a

disability to engage in an otherwise lawful business, in addition to fine and imprisonment, the Court said:

> "It is equally clear that any fine or penalty is excessive which seriously impairs the capacity of gaining a business livelihood. *The penalties in this act, which are imperative and not discretionary, must necessarily break up business, and are not measured by standard or amount. The only measure of restraint is the value of the business broken up, and this may reach tens of hundreds of thousands of dollars.*
>
> *"It is safe to say that throughout the United States any fine or forfeiture is unusual which has not some limitation of value. • • • Disability to transact business is almost or quite unheard of in this country."* (Emphasis supplied.)

[fol. 46]

II

The Power of Suspension is a Legislative or Administrative Power and its Delegation to the Courts Violates the Separation of Powers Doctrine of Article III of the Constitution of Illinois

(*Appellant's Brief, Point IV; Appellant's Reply Brief, Point III D*)

The Court, in its opinion, disposes of this contention with the following statement:

> "The determinations involved in the present case, however, are of the kind which has traditionally been considered judicial. The application of generalized standards—negligence, malice, fraud and a host of others—to particular conduct was the routine business of the courts long before administrative agencies, as we know them, came into existence. The issues in a suspension proceeding bear a marked resemblance to the issues which courts decide daily in the administration, for example, of statutes providing for probation and indeterminate sentences. And since the procedure in suspension proceedings is governed by the Civil Practice Act, and an order of suspension is enforceable by contempt, the analogy to injunction is obvious."

Appellant respectfully submits that the foregoing disposition of the issue misapprehends the law and appellant's argument in the particulars to be noted.

Section 132.02 designates that in a suspension proceeding the Court shall take into account generalized standards pertaining to character and gravity of violations and the relationship of lawful to unlawful operations of the operator. What these terms mean, and what effect shall be given to a determination of these factors, is nowhere indicated in the statute. Appellant has argued that they may mean a number of things including questions of negligence, wilful misconduct, or unavoidable and accidental violations. [fol. 47] But whatever they mean, these determinations are not comparable to the judicial function exercised in the ordinary adversary civil or criminal action where the issue of guilt or liability depends upon equating particular conduct to general standards such as fraud or negligence. In such proceedings fraud or negligence constitute the ultimate issues upon which innocence or guilt will be predicated in matters involving standards of conduct particularly within the province of a court or jury. In the instant case, however, the ultimate issue is not negligence or wilful misconduct but rather the issue of fitness or ability (which is the net practical effect of the application of the statute) of regulated carriers to perform services authorized by certificates of public convenience and necessity. That this power is essentially legislative or administrative must be conceded by the fact that its exercise is now entrusted to the Department of Public Works and Buildings in its administration of the Illinois Truck Act.

Clearly, a statute which would empower courts to determine the issue of public convenience or necessity, in an original proceeding would violate the principle of separation of powers (Appellant's Brief, p. 41 *et. seq.* discussion under *Cromwell* v. *Jackson*, 52 A. (2d) 79). In like manner, the power to suspend a license or privilege upon grounds of lack of fitness or ability is an administrative power under the Illinois Truck Act (Chap. 95½, Sec. 277, Ill. Rev. Stats. 1951). This principle is not one of abstract speculation in this State. In *People* v. *Applebaum*, 251 Ill. 18,

cited by appellants (Appellant's Reply Brief), the court said:

> "Neither the granting nor the revocation of a license is the exercise of judicial power as that term is understood in reference to the distribution of the powers of government."

[fol. 48] More pertinent to the issues of this case, however, is *State* v. *Huber*, 129 W. Va. 198, 40 S. E. 2d 11, 168 A. L. R. 808 (1946), *not heretofore cited by appellant*. In that case, a statute was held unconstitutional under the separation of powers principle which gave concurrent and original jurisdiction to courts of record to entertain complaints relating to alleged violations of law in respect to the sale or distribution of beer and which authorized the suspension or revocation by the court of licenses issued by the State Liquor Commission. In an exhaustive and illuminating judicial analysis, the court, among other conclusions, states, p. 215 (W. Va.):

> "• • • if we sustain the present law conferring jurisdiction on courts of record to revoke licenses to sell non-intoxicating beer, it will, in principle, amount to total destruction of the theory of separation of power."

The true limits of the judicial power are noted in the following statement, p. 222 (W. Va.):

> "But considerations of high public policy, and the plain terms of our Constitution, impel us to the conclusion that the licensing and regulation of the sale and distribution of non-intoxicating beer is the exclusive function of the legislative department of our government under the police power of the State; *is not a judicial function; and cannot be made the subject of the exercise of judicial power*, save only in cases where in the exercise by the legislature of its power in the premises, there is a violation of the Constitution, or some arbitrary or fraudulent exercise of that power, or its exercise is without excuse or without evidence, which itself would be an arbitrary exercise of power.

Then and only then, may judicial power be invoked.
• • •"

When, therefore, this Court in its opinion states that the power of suspension of operating rights granted under [fol. 49] certificates of public convenience and necessity is a traditional judicial function, it has misapprehended and overlooked the true principle of law respecting separation of powers.

The fact that a suspension order is enforceable by contempt, as stated by the Court, does not make the basic power of suspension judicial. The appendage of an admittedly collateral judicial power to an action or proceeding which is legislative or administrative cannot change the character of the underlying power. If this were so a law vesting in the General Assembly the judicial power to hear and determine cases or controversies in law or equity would become a valid exercise of legislative power if the law reserved to the legislature, the power to amend or repeal such legislation.

It is respectfully submitted, therefore, that this Court has misapprehended the nature of the power vested in the courts under Section 132.02; that such power is legislative or administrative and that the power of suspension, dependent as it is upon the determination of the issue of fitness and ability, cannot be delegated to the court in the face of the proscription of Article III of the Constitution of Illinois.

[fol. 50]

III

Section 132.02 Fails to Define the Offense for which Suspense is Directed on Violation of the Due Process Limitations of the Federal and State Legislations; by Delegating to the Courts the Power to Define the Offense it Further Violates the Separation of Powers Doctrine of Article III of the Constitution of Illinois

(Appellant's Brief, Points IA and IV B, and Appellant's Reply Brief, Point IIIA)

It is Appellant's earnest conviction that the Court, in its opinion on these issues, has overlooked or misapprehended

the principles respecting the definition of an offense as they relate to the legislative power under due process and the judicial power under Article III of the Constitution of Illinois. The Court states as follows:

> "While the standards here fixed are expressed in general terms, they deal unmistakably with the quality conduct which is made the basis of the suspension of the privilege. They include factors relating to deliberate, negligent, or excusable quality of the violations which are relied upon as a basis for revocation. In this we see no constitutional defect."

In its analysis the Court emphasizes the issue from the viewpoint of the potential violator of the statute, stating that for him.

> "it would obviously be desirable to know the precise conditions under which he may violate the law without incurring the risk of suspension of his license. But the desire of the operator is not equivalent to a command of the Constitution".

Conceding for the purpose of this issue that the operator is sufficiently forewarned that any violation of Section 131.01, regardless of the character or gravity thereof, subjects him to the risk of the suspension of his license, the [fol. 51] point nevertheless remains that each Court or jury, in its evaluation of the conditions underlying the violations, determines *in its uncontrolled discretion*, the legal effect to be given to any record of violations and thus *in effect defines the offense of habitual violation*. The Court or jury does not apply the law—it makes the law—*for it has no directive from the legislature*, other than the undefined concepts of "character and gravity" of the violations and "the extent of the operations of the carrier which did not involve violations," by which it is to determine if the defendant is guilty of habitual violation. As stated in *State* v. *Lantz*, 90 W. Va. 738 (Appellants Reply Brief, p. 19), "There would be as many different standards as there would be different opinions among the "juries and judges trying the cases as the same arise". It is this phase of the issue which the Court has not treated in the opinion and

which leads Appellant to the conclusion that the same may have been overlooked. Appellant respectfully invites the attention of the Court to its analysis of the issue, particularly under Point IV B of Appellants Brief and Point VIII A of Appellant's Reply Brief.

IV

The Prima Facie Test of Violation Denies Appellant the Equal Protection of the Laws and Deprives it of Due Process of Law

(Appellant's Brief, Point II)

Appellent has contended that the prima facie test of 10 violations unreasonably discriminates against the large commercial motor vehicle operator (Pages 32-36, Appellant's Brief). The Court, in its proposed opinion, disposes of this as follows:

> "We are aware of no constitutional provision which [fol. 52] would invalidate an absolute rule of suspension for specified violations. Provisions for suspension or revocation of drivers' licenses for specified violations of law are commonplace, and the fact that these provisions do not take into account the number of miles driven by the respective violators has not, so far as we are aware, been thought to invalidate them."

Customarily it is true, as the Court states, that an absolute, uniform rule of suspension applicable to all persons alike cannot be challenged on due process or equal protection grounds. The very fact of uniformity in the ordinary case, is the guarantee of its validity. But this is not the ordinary case; it is unique and extraordinary and has never before been the subject of judicial analysis. *In the statute under review, the very fact of uniformity creates the discrimination.* The bracketing into one class of the 1000 vehicle operator and the single truck operator renders the burdens of compliance upon the former more difficult and severe than upon the latter and makes the application of the law and the penalty discriminatory *by reason of the uniformity of the law.* This is a wholly novel situation to which the principles and standards applicable in the ordi-

nary cases become dubious and uncertain. The analogy employed by the Court concerning the irrelevancy of the number of miles driven by a violator misapprehends the distinction, for we are not dealing here with the suspension of the personal privilege of operating a motor vehicle, but with the suspension of the privilege to carry on a lawful business. And in the conduct of a business employing 1000 vehicles and several thousand employees, the unavoidable margin of human error arising from acts which can never be completely guarded against, as well as the unavoidable and innocent violations resulting from the shifting of cargo, will necessarily place a large carrier in a position of discrimination as opposed to the small operator who can more effectively control his compliance with the [fols. 53-54] law. Appellant is mindful of the difficulty of defining legislative classifications graded according to miles traveled or motor vehicle units employed, but this difficulty, which is a legislative problem, does not mitigate the fact of unequal and discriminatory application of the present law.

Therefore it is respectfully suggested that the rule of uniformity urged by the Court in support of the law, as applied to new and extraordinary circumstances in which the uniformity *creates* the discriminatory and unequal application of the law, is not a reasonable measure of the State's power in respect to this issue.

Conclusion

Because of the foregoing points misapprehended or overlooked in the opinion, appellant respectfully requests that a rehearing be granted in respect to the issues noted.

Respectfully submitted, Axelrod, Goodman & Steiner,
Attorneys for Plaintiff-Appellant.

[fol. 55] Filed. Oct. 19, 1953. Earle Benjamin Searcy, Clerk.

[File endorsement omitted.]

[fol. 56] In The Supreme Court of Illinois, May Term, A. D. 1953.

[Title omitted]

Appellee's Petition for Rehearing—Filed Oct. 19, 1953

Appellees, the Attorney General of the State of Illinois and the State's Attorney for Marion County, respectfully suggesting that this Court has overlooked or misapprehended the considerations stated in the Suggestions in Support of this Petition, earnestly move this Court to grant a rehearing in this cause.

Respectfully submitted, Latham Castle, Attorney General of the State of Illinois, Supreme Court Building, Springfield, Illinois, Attorney for Defendants-Appellees; John L. Davidson, Jr., First Assistant Attorney General; William C. Wines, Assistant Attorney General; Lee D. Martin, Assistant Attorney General; Mark O. Roberts, Special Assistant Attorney General, Of Counsel.

[fol. 57] Suggestions in Support of This Petition

I

This Court Has Decided an Important Question Upon Considerations and in the Light of Authorities Not Cited in the Brief. Courts More Readily Grant Rehearings in Such Cases Than in Cases in Which All of the Arguments Advanced and Authorities Relied Upon Were Presented By the Parties.

This Court has decided a very important question as to the partition of sovereignty between the Federal and State governments, candidly stating that it is

> "aware of no case which involves the validity of sanction of this type as applied to interstate motor carriers • • • "

and that

> "The issue presented lies within a sensitive area of State and Federal relations."

The Court, recognizing the moment of the question, has exerted its own diligence in canvassing the authorities and considering the principles of Federal constitutional law that it deems controlling.

It is eminently proper that a court should make its own study of relevant authorities and principles. But where it does so, it should, we submit, grant rehearing more readily than it will in cases where the theory upon which the case has been decided was fully explored in the briefs and at the bar.

[fol. 58] II

Detroit-Cincinnati Coach Line, Inc. v. Public Utilities Commission of Ohio,— Ohio —, 164 N. E. 356, Is Very Much in Point.

The court stated that it was

> "aware of no case which invoives sanctions of this type as applied to interstate motor carriers".

Detroit-Cincinnati Coach Line, Inc., v. *Public Utilities Commission of Ohio*,— Ohio —, 164 N. E. 356, cited by the Supreme Court of Ohio, is, however, very much in point. In that case the Public Utilities Commission revoked the *State* permit of an interstate carrier, with the consequence that if the order was valid, the carrier could engage in neither intrastate *nor interstate* commerce.

In sustaining this order, the court said in the last paragraph of its opinion:

> "The only problem presented by this proceeding is whether the state authorities can enforce that obedience by the extreme process of revocation of the interstate right altogether. The persons operating motor vehicles upon state highways as common carriers in interstate commerce are guaranteed against unreasonable interference and unreasonable burdens, but this immunity does not justify such persons in becoming outlaws or abusing franchises thus given to them. We are of the opinion that the right of revocation and prohibition is necessary to the maintenance of a proper respect for state laws and state institutions. We are further of the opinion that such revocation upon such

grounds does not offend against the provisions of section 8 of article 1 of the Federal Constitution, though it of course should not be resorted to except in aggravated cases. The commission has found this to be an aggravated case, and its order should be affirmed."

"Order affirmed."

[fol. 59]

III

The Suspension Provisions Are a Reasonable and Valid Exercise of the State Police Power to Conserve the Public Highways. If the Provisions Are Valid as to the Citizens of Illinois and Those Engaged in Intrastate Commerce Then, a Fortiori, the Provisions Must Be Valid as to Those Engaged in Interstate Commerce.

The Court's presently standing opinion recognizes the reasonableness and therefore the constitutional validity of the sanctions imposed by the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, Ch. 95½, Par. 229 (b)) as applied to those who, by repeated overloading of trucks, wreak havoc upon the highways that the taxpayers of Illinois have built as thoroughfares for state and national commerce. The Court recognizes the sanctions as applicable even to those engaged in interstate commerce; for it permits the revocation of the *intrastate* privilege of using the highways even when the violation for which the privilege is rescinded is in respect to interstate transport.

But, says the Court, the privilege of locomotion on the state's highways may not be denied with respect to

> "the right to engage in interstate commerce, particularly in the cases of carriers who hold certificates of convenience and necessity under the Federal Motor Carrier Act."

In reaching this conclusion, we respectfully submit that the Court overlooked the following important considerations:

Where a state exercises its police power to preserve its citizens from death, injury or the economic law attendant upon the destruction of highways, it exercises an attribute of sovereignty far different from that which it exerts in

[fol. 60] the levy of a tax. Indeed, one of the paramount reasons for the forging of the Union by the Constitution of the United States was to prevent invidious discriminations by onerous taxes against "commerce among the several States" and to do away with the system of duties, imposts, tariffs and other taxes that completely sovereign governments are wont to levy against each other's goods. No such considerations are exigent when the matter is one of protecting life, limb and property from destruction.

Indeed—and the presently standing opinion does not advert to this consideration *by enforcing the sanctions imposed by the present act, the State preserves its highways for interstate*, as well as intrastate, *travel and thereby, far from discriminating* against *or burdening, actually facilitates and fosters interstate commerce.*

Hence, we respectully suggest that all of the tax cases cited by the Court in its opinion or relied upon implicitly in its reasoning are signally distinguishable from the case at bar. Such are *Postal Telegraph Cable Co.* v. *Adams*, 155 U. S. 688, and *St. Louis, Southwestern Ry. Co.* v. *Arkansas*, 235 U. S. 350, cited by the Court at folio 9 of its present opinion.

IV

The Legislation Under Which Appellant Was Granted the Right to Engage in Interstate Commerce (Part II of the Interstate Commerce Act, 49 U. S. C. 301, et seq.) Expressly Reserved to the States the Right to Enforce as to Interstate Motor Carriers the Sanction Provided in Section 132.2.

Part II of the Interstate Commerce Act, under which appellant claims the right to engage in interstate motor carrier operation, provides (sec. 226, 49 U. S. C. 326):

> "The Commission is hereby authorized to investi-[fol. 61] gate and report on the need for Federal regulation of the sizes and weight of motor vehicles and combinations of motor vehicles * * *."

This provision was considered by the Supreme Court of the United States in *Maurer* v. *Hamilton*, 309 U. S. 598, and the Court discussed its legislative history quite extensively. Relying upon this provision and its legislative history the

Court held valid a statute of Pennsylvania which banned absolutely from the highways use of vehicles which had been expressly authorized to operate by the Interstate Commerce Commission under Part II of the Interstate Commerce Act.

The Court quoted and obviously relied upon for authority in reaching its decision the following statements, explaining the above quoted section 225, from the testimony of Joseph B. Eastman before the Senate Committee on Interstate Commerce while the Committee was considering the legislation which became Part II of the Interstate Commerce Act. Mr. Eastman was the chief author of the legislation and was a member of the Interstate Commerce Commission and Federal Coordinator of Transportation. He said (309 U. S. pp. 608, 609):

> "But on this question of sizes and weight of motor vehicles which is an extremely important matter from the standpoint of public safety and convenience, there is not only the question here as to what those sizes and weights ought to be from the standpoint of road construction and road use, but there is also the legal question as to whether the Federal government can exercise power over the matter or whether it is a matter exclusively within the jurisdiction of the states. It was because of doubts not only as to the facts with reference to that matter, but also to the law that provisions were made for this investigation."
>
> • • • • • • •
>
> "with respect to size and weight of vehicles • • • we do not undertake in this bill to cover that situation [fol. 62] except to provide for a thorough investigation of it by the Commission with recommendations to Congress because there is involved not only the question of fact as to what the regulations should be, but also as to how far the federal government has power to interfere with the exercise of the police power of the states with respect to the use of their highways. They have the right to protect their highways against unsafe or unreasonable use, but whether or not the federal government can come in and interfere with it I cannot say at this time."

Maurer v. *Hamilton*, *supra* (309 U. S. 598), was decided in 1940, but Congress has made no attempt to impair the power of the states relating to the regulation of sizes and weight of motor vehicles.

The motor carrier involved in *Maurer* v. *Hamilton* had been granted a certificate of public convenience and necessity by the Interstate Commerce Commission to operate as an interstate motor carrier, just as has appellant in the instant case. Further, after a hearing the Commission held that the vehicles affected by the Pennsylvania statute could be lawfully operated pursuant to such certificates despite the state law. But the Court held that the state had the absolute and unfettered right to ban the vehicles in question from its roads, by reason of the reserved power in the state which Congress had not attempted to disturb.

In *South Carolina* v. *Barnwell Bros.*, 303 U. S. 177, the Court held valid a state law limiting the total gross weight (weight of vehicle and load) of a single vehicle or combination of vehicles to 20,000 pounds, despite the admitted fact that the law prevented many interstate motor carriers from conducting *any* operations in the state.

In discussing the state's power the Court made a statement of particular significance here. The motor carriers [fol. 63] objected that the 20,000 pounds gross weight limitation was a wholly irrational method of preventing damage to the roads. They presented evidence that wheel and axle weights were the critical factors in pavement damage and not gross weight, and that the roads could be better protected by wheel and axle weight limitations which at the same time would not deny to the carriers the use of their vehicles that was denied by the 20,000 gross weight law. Admitting for purpose of argument the soundness of this contention, the Court nevertheless held the 20,000 pounds gross limitation valid simply *because it was easier to enforce* than a wheel or axle weight limitation. The Court said (303 U. S. pp. 192-3):

> "* * * The choice of a weight limitation based on convenience of application and consequent lack of need for rigid supervisory enforcement is for the legislature, and we cannot say that its preference for the one over the other is in any sense arbitrary or unreasonable. * * * "

Illinois could by statute ban all vehicles with a gross weight of more than 20,000 pounds, and that would prevent appellant from conducting any operations at all. The United States Supreme Court directly so held in the *Barnwell* case. By thus keeping the big motor carriers off the highways the state could avoid the evils of overloaded trucks. But the state has not as yet elected to pursue such a drastic remedy. Instead it permits motor carriers to carry loads which are sufficiently large to permit an economic business operation, but it has conditioned its permission to carry such loads on strict compliance with the law. It has just as much right to exercise its reserved powers to protect its highways in that fashion as the states had in the exercise of the powers considered in the *Maurer* and *Barnwell* cases. In those two cases the states imposed an absolute, perpetual ban; in the instant case the ban is for [fol. 64] only ninety days. And the ninety days' prohibition is applied only to a carrier who has demonstrated by its conduct a clear intention to defy the state's reasonable truck weight requirements. *Maurer* v. *Hamilton*, *supra* (309 U. S. 598), and *South Carolina* v. *Barnwell Bros.*, *supra* (303 U. S. 177), carefully read, are clear authority to sustain the Illinois statute.

So also are the earlier cases, decided before Part II of the Interstate Commerce Act was enacted. In *Sproles* v. *Binford*, 286 U. S. 374, a Texas statute was held valid which limited the *net load* which could be carried on a vehicle or combination of vehicles to 7,000 pounds. The reason assigned for validity was *ease of enforcement*.

In *Morris* v. *Duby*, 274 U. S. 135, an order of the Oregon Highway Commission reduced the permissible truck gross weight (vehicle and load) from 22,000 to 16,500 pounds. This order and the Oregon statute under which it was made were held valid, despite the undisputed evidence that it would ban certain interstate trucking operations. The Court said (274 U. S. p. 144):

> "The mere fact that a truck company may not make a profit unless it can use a truck with a load weighing 22,000 or more pounds does not show that a regulation forbidding it is either discriminatory or unreasonable."

In the Oregon case the State Highway Commission permanently banned certain motor carrier traffic as a means of conserving the state's roads. That action was held valid. In this case the ban is for only ninety days, and applies to only one carrier.

It is clear from these cases that the state has the power exercised in the Illinois act to protect its highways from damage, and it is further clear that Part II of the Inter-[fol. 65] state Commerce Act, under which appellant claims the right to operate in interstate commerce, has reserved that power to the state.

We respectfully invite the court's attention to another case involving suspension of an interstate carrier by a State for violation of State regulations. In *Welsh* v. *New Hampshire*, 306 U. S. 79, the Supreme Court of the United States, which affirmed the Supreme Court of New Hampshire which held valid a suspension of the right to operate on the highways of New Hampshire of an interstate carrier by the Public Service Commission of that State pursuant to a State statute. Welsh was a Massachusetts corporation doing business as a carrier by truck. Ninety-nine per cent of its business was interstate. It was charged with violating a statute of Massachusetts which forbade the owner of any motor vehicles on its highways to allow any driver on its highways to operate continuously for more than twelve hours.

Under the Motor Carrier Act the Interstate Commerce Commission was empowered to prescribe maximum hours and services. Such regulations were established prior to the effective date of the suspension order of the New Hampshire Commission. The effective date of the Interstate Regulations was January 31, of 1939. Subsequent to the suspension by New Hampshire, the United States Supreme Court in affirming said:

> A. "The roads belong to the State. There is need of local supervision of operation of motor vehicles to prevent collisions, to safeguard pedestrians, and the like. Unquestionably, reasonable regulations of periods of continuous driving is an appropriate measure. In view of the efforts of governmental authorities everywhere to mitigate the destruction of life, limb,

and property resulting from the use of motor vehicles, it cannot be inferred that Congress intended to supersede any state safety measure prior to the taking [fol. 66] effect of a federal measure found suitable to put in its place. Its purpose to displace the local law must be definitely expressed. *Hintz* v. *Baldwin*, 289 U. S. 346, 350.

B. "The rule applicable is clearly stated in *Illinois Central R. Co.* v. *Public Utilities Comm'n.*, 245 U. S. 493, 510: 'In construing federal statutes enacted under the power conferred by the commerce clause of the Constitution • • • it should never be held that the Congress intends to supersede or suspend the exercise of the reserved powers of a State, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested'."

The court refers to the right of appellee to engage in interstate commerce. As we pointed out on page 56 of our brief, the Motor Carrier Act expressly provides "(9b) No certificate issued under this chapter shall confer any proprietary or property rights in the use of Public Highways," (Sec. 7 Motor Carrier Act).

We have searched in vain for cases holding that the license, permit or certificate of which appellant claims by its pleading to have under the Federal Motor Carrier Act has any or ever intended such effect that the holder may have a vested right to operate in defiance of the exercise of police powers of the several States in controlling the public highways of those States. We have considered carefully *Postal Telegraph Co.* v. *Adams*, 155 U. S. 688; *St. Louis, S. W. Ry.* v. *Arkansas*, 235 U. S. 350, and *Hill* v. *Florida*, 325 U. S. 538. The first two cases involve the exercise of the taxing powers of the State and the right of a State to enfore its tax levy by suspending interstate commerce. The third case, *Hill* v. *Florida*, was in an area to set labor relations in which the Federal Government had granted rights and laid down regulations. It did not involve facilities, in the instant case highways, built by the State's taxpayers.

When it is reflected that Illinois imposes license fees far [fol. 67] higher than those of neighboring states,—so high

that they have been assailed as confiscatory (*Bode* v. *Barrett*, 412 Ill. 204; 73 S. Ct. 468), there is irony in reflecting that the State must suffer the destruction of its roads by denizens of other States while its own citizens are proscribed from using highways they they may destroy but at least helped to build.

We anticipate that it may be suggested that in the future highways over which appellant travels may have been constructed under grants from the United States Government. That argument was long ago advanced and rejected by the Supreme Court in *Morris* v. *Dubey*, 274 U. S. 135.

V

Congress Would Have No Power Under the Federal Constitution to Deprive the States of the Right to Enforce as to Interstate Motor Carriers the Sanction Provided in Section 132.02. The Legislative History of Part II of the Interstate Commerce Act shows That Doubt as to the Power of Congress in This Respect Caused Congress to Reserve This Right to the States

In the few cases where the point has been considered the Supreme Court of the United States has held that a state in the management or protection of its own property, where that property is itself not used by the state in interstate commerce, is not subject to the restraints of the commerce clause. See *Geer* v. *Connecticut*, 161 U. S. 519; *Hudson County Water Co.* v. *McCarter*, 209 U. S. 249; *Silz* v. *Hesterberg*, 211 U. S. 31; and *Bayside Fish Flour Co.* v. *Gentry*, 297 U. S. 422.

In building, maintaining, and regulating the operation of its highways the state is not engaged in interstate commerce and is not employing its property, the highways, in [fol. 68] interstate commerce. See *Henderson Bridge Company* v. *Kentucky*, 166 U. S. 150; and *Detroit International Bridge Co.* v. *Corporation Tax Appeal Board*, 294 U. S. 83.

It follows from these cases that Congress could not, if it wished, deprive the state of the power to regulate the weight of vehicles using its highways or to invoke the sanction of the statute here in question.

But of course Congress has not attempted to deprive the states of these powers; on the contrary, Congress has ex-

pressly reserved these powers to the states. These cases are referred to in connection with the expression by Mr. Eastman before the Senate Committee on Interstate Commerce of his doubt as to the power of Congress to invade this right of the states. These cases are pertinent here as showing the basic authority of the states to protect and regulate their property free from the restrictions of the commerce clause.

Wherefore, appellees request the Court to grant a rehearing of that part of its decision holding that the statute in issue cannot be enforced as to interstate motor carrier operations.

Respectfully submitted, Latham Castle, Attorney General of the State of Illinois, Supreme Court Building, Springfield, Illinois, Attorney for Defendants-Appellees.

John L. Davidson, Jr., First Assistant Attorney General, William C. Wines, Assistant Attorney General, Lee D. Martin, Assistant Attorney General, Mark O. Roberts, Special Assistant Attorney General, Of Counsel.

[fol. 69] IN SUPREME COURT OF ILLINOIS

[Title omitted]

ORDER DENYING APPELLANT'S REHEARING AND ALLOWING APPELLEES' REHEARING—November 16, 1953

And now, on this day, the Court having duly considered the petitions for rehearing filed herein, and being now fully advised of and concerning the premises;

It is hereby ordered, that the petition for rehearing filed by Hayes Freight Lines be, and the same is, hereby denied;

It is further ordered, that the petition for rehearing filed by Latham Castle, Attorney General, be, and the same is, hereby allowed.

[fol. 70] IN SUPREME COURT OF ILLINOIS

[Title omitted]

REARGUMENT AND SUBMISSION OF CAUSE—November 20, 1953

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that a rehearing having been allowed herein and appellant having filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause on briefs, petition for rehearing, answer and reply is here resubmitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 71] IN SUPREME COURT OF ILLINOIS

No. 32855

HAYES FREIGHT LINES, INC., Appellant

vs.

LATHAM CASTLE, ATTORNEY GENERAL OF THE STATE OF ILLINOIS, ET AL., etc., Appellees

OPINION ON REARGUMENT—January 20, 1954

[fol. 72] Docket No. 32855—Agenda 31—November, 1953.

MR. CHIEF JUSTICE SCHAEFER delivered the opinion of the court:

Section 132.02 of the Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1951, chap. 95½, par. 229b,) pro-

vides for suspension of the privilege of operating a commercial vehicle upon the highways when habitual operation in violation of the maximum weight and load limits fixed by section 131 of the act (Ill. Rev. Stat. 1951, chap. 95½, par. 228, is established. Plaintiff filed a complaint in the circuit court of Marion County in which it alleged that an action had been brought in that court charging plaintiff with 157 violations of section 131, and seeking to suspend its commercial operator's privilege for ninety days. On information and belief, plaintiff also alleged that a second such action was about to be instituted to suspend its privilege for either ninety days or one year because of 144 additional violations. Asserting that the suspension provisions violate the State and Federal constitutions in respects which will be discussed, plaintiff sought a declaratory judgment that they are invalid, and an injunction to restrain the defendants, the Attorney General and the State's Attorney of Marion County, from proceeding further against the plaintiff. The circuit court found the suspension provisions valid, granted defendants' motion to dismiss the complaint, and entered an order of dismissal against the plaintiff, who appeals directly to this court.

The complaint alleges that the plaintiff is a corporation engaged in the transportation of property by motor vehicle as a common carrier, both in interstate and intrastate commerce. It operates 1929 motor vehicles, employs 2059 persons, of whom 736 are utilized in its Illinois operations, and maintains terminals at thirty-five cities in eight States. It conducts interstate operations in ten States, including Illinois, under a certificate of public convenience and necessity issued to it by the Interstate Commerce Commission. It also operates in intrastate commerce within Illinois as a line-haul carrier, pursuant to a certificate of public convenience and necessity issued by the Division of Motor Carriers of the Department of Public Works and Buildings.

It is also alleged that during the time covered by the complaint in the suspension proceeding, plaintiff's vehicles [fol. 73] operated approximately 60,000 vehicle trips over the highways of the State, traveling a total of 90,000,000 miles, and transporting daily 7,500,000 pounds of property, and that only two of the 157 violations charged involved

"gross" overloads, as distinguished from "axle" overloads resulting from the shift of cargo during the course of operation of the vehicles.

Plaintiff further alleges that its business as a common carrier constitutes a valuable property right which requires, for its continuous existence, that a regular and uninterrupted service both in interstate and in intrastate commerce be performed, and that a suspension of its service for either ninety days or one year may result in financial ruin.

Section 132.02 alone is attacked here. Plaintiff concedes the validity of section 131, and of section 132.01 (Ill. Rev. Stat. 1951, chap. 95½, par. 229a,) which provides a schedule of fines, graduated according to the amount of excess weight, for violation of section 131.

Subsection (b) of section 132.02, which was added to the act in 1951, provides that the privilege of a commercial vehicle operator to operate upon the highways shall be suspended when he shall "habitually operate" in violation of the maximum load and weight limits of section 131. The "commercial vehicle operator's privilege" is defined by section 132.02(a)(3) as "the privilege, recognized or conferred by any law of this state, of any person * * * to operate * * * commercial vehicles * * * upon the public highways of this state." Section 132.02(c) provides that upon conviction of any person for a violation of section 131 the arresting officer shall report the circumstances of the arrest to the Director of the Department of Public Safety, who is required to mail a copy of the report to the person in whose name the offending vehicle is registered. Section 132.02(d) provides that the Director of the Department of Public Safety shall notify the Attorney General whenever a total of ten convictions has been entered during any twelve months' period with respect to vehicles operated by any one operator. It then becomes the duty of the Attorney General to bring a proceeding to suspend the operator's privilege. By subsection (e), the circuit courts and the superior court of Cook County are given jurisdiction of suspension proceedings.

Subsection (g) provides that proof of a total of ten or more convictions for violation of section 131 during any twelve months' period by any one operator constitutes [fol. 74] *prima facie* evidence that the operator has habitu-

ally operated in violation of section 131. Subsection (g) further provides that "the court shall not find that a defendant has habitually operated one or more commercial vehicles in violation of Section 131 of this Act unless and until the court shall have considered the evidence to the contrary, if any, offered by the defendant, and such evidence may include, but shall not be limited to, evidence relating to the character and gravity of such violations and the extent of the operations of commercial vehicles by or on behalf of such defendant upon the public highways of this state which did not involve any such violations"

Subsection (i) provides that whenever the court shall find from the evidence that an operator has habitually operated one or more commercial vehicles in violation of section 131, it shall enter an order suspending the operator's privilege for a period of ninety days. If at any time thereafter, in another suspension proceeding, the court shall find that the operator has again habitually operated in violation of section 131, it shall enter a similar order of suspension for a period of one year. An order of suspension is enforceable by contempt proceedings, (subsection (j),) and operation after suspension is a misdemeanor (subsection (l)).

The plaintiff contends that section 132.02 is invalid under the Federal and State constitutions. The Federal grounds relied upon are the due process, equal protection, commerce and supremacy clauses. The State grounds are the due process and separation of powers clauses, and the requirement of section 11 of article II that all penalties be proportioned to the offense. We shall defer consideration of the contentions raised under the commerce and supremacy clauses of the Federal constitution until the other issues have been discussed.

Statutory provisions for suspension or revocation of licenses of all types upon proof of violation of law are so familiar as not to warrant citation. In the motor vehicle field, the Illinois provision for revocation of the ordinary driver's license for specified statutory violations (among them three convictions for violation of speed limits) (Ill. Rev. Stat. 1951, chap. 95½, par. 35j), is typical of provisions which are uniformly regarded as permissible regulations of the use of the highways. (*People* v. *Kobylak*, 383 Ill. 432; *I Re Probasco*, 269 Mich. 453, 257 N. W. 861; *Com-*

monwealth v. *Harris*, 278 Ky. 218, 128 S. W. 2d 579; *La-*
[fol. 75] *Plante* v. *State Board*, 47 R. I. 258, 131 Atl. 641; *Commonwealth* v. *Funk*, 323 Pa. 390, 186 Atl. 65; *Pritchard* v. *Battle*, 178 Va. 455, 17 S. E. 2d 393.) That such provisions generally aim to foster public safety, while the primary bearing, at least, of the present provision is the protection of the highways from abuse by excessively heavy loads, cannot be a material difference. Plaintiff would also distinguish these cases on the ground that the suspension here "is directed precisely to a prohibition upon the right to engage in a lawful business." But one who uses the public highways for the conduct of his business certainly cannot on that account claim a preferred position. *Bode* v. *Barrett*, 412 Ill. 204; *Weksler* v. *Collins*, 317 Ill. 132.

Plaintiff, however, asserts that that portion of section 132.02(g) which requires the court to consider evidence relating to the character and gravity of the violations and the extent of the operations of the defendant in determining whether there has been habitual operation in violation of the act fails to provide a "reasonable ascertainable standard" and therefore violates both due process and the separation of powers required by article III of the constitution of Illinois. Insofar as the suspension provision is conditioned upon the occurrence of a statutory offense, there is, of course, no question of indefiniteness, for the statutory maximum weight and load limits are expressed in precise units of physical measurement. But it is argued that the terms "character" and "gravity" lack precision, and that they afford no standard by which an operator who has been convicted of a violation of a statutory load limit can tell whether that violation falls "within or without the type of violation for which an operator's privilege may be suspended." As to the factor of "extent of operations," which the plaintiff describes as the "percentage relationship of violations to nonviolations," it is said that no measure is prescribed for either the court "or the operator to adjudge or determine that distinctive percentage which falls within the prohibited category, and that which falls without it." In support of this argument plaintiff relies upon *Connally* v. *General Construction Co.*, 269 U. S. 385; *Small Company* v. *American Sugar Refining Co.*, 267 U. S. 233; *United States* v. *Capital Traction Co.*, 34 App. D. C. 592,

and other cases in which statutes have been invalidated for want of definiteness.

Neither proposition is sound. It may be conceded, as the plaintiff suggests, that the standards provided do not per- [fol. 76] mit an operator to know in advance whether or not his conduct, admittedly in violation of the law, will be determined to warrant a finding that he has habitually operated in violation of the act with resulting suspension. From the point of view of the operator it would obviously be desirable to know the precise conditions under which he may violate the law without incurring the risk of suspension of his license. But the desire of the operator is not equivalent to a command of the constitution. Many years ago it was pointed out that "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree." Mr. Justice Holmes in *Nash* v. *United States*, 229 U.S. 373, 377.

The General Assembly is not required to establish an absolute criterion for the revocation of this privilege. It may concern itself with the quality of the conduct which is the basis of revocation. It might express that concern by attempting to enumerate all the conditions of weather, roads, and loads, and the myriad of transitory circumstances peculiar to the business of the offending carrier or to the offense which might be relevant by way of excuse or justification. But no constitutional provision requires it to do so as long as intelligible standards are established to be applied by the agency to which the determination is committed.

While the standards here fixed are expressed in general terms, they deal unmistakably with the quality of the conduct which is made the basis of suspension of the privilege. They include factors relating to the deliberate, negligent, or excusable quality of the violations which are relied upon as a basis for revocation. In this we see no constitutional defect.

The plaintiff also contends that the determination of whether or not there has been operation in habitual violation, and hence of whether or not the privilege to operate should be suspended, is so inherently an administrative function that it cannot, under article III of the constitu-

tion, be committed to a court. In support of this argument plaintiff relies on *Borreson* v. *Department of Public Welfare*, 368 Ill. 425. The statute in that case required the court, on an appeal from an administrative agency, to determine *de novo* the amount to be paid to aged persons for old-age assistance, and it was held that the function was administrative, and could not validly be committed to a court. The determinations involved in the present case, [fol. 77] however, are of the kind which have traditionally been considered judicial. The application of generalized standards—negligence, malice, fraud, and a host of others—to particular conduct was the routine business of the courts long before administrative agencies, as we know them now, came into existence. The issues in a suspension proceeding bear a marked resemblance to the issues which courts decide daily in the administration, for example, of statutes providing for probation and indeterminate sentences. And since the procedure in suspension proceedings is governed by the Civil Practice Act, and an order of suspension is enforceable by contempt, the analogy to injunction is obvious. We hold, therefore, that section 132.02 does not violate the provisions of article III.

Plaintiff also attacks the provision that proof of ten or more convictions for violation of the load limits within twelve months shall constitute *prima facie* evidence of habitual operation in violation of the act. It is contended that this provision discriminates unreasonably against one who operates numerous vehicles on frequent trips and in favor of one who operates fewer vehicles and less frequently. Because a *prima facie* case of habitual operation in violation of the statute may be established against operators whose ratio of unlawful to lawful operations is substantially different, it is urged that the statute creates a discrimination which is invalid under the equal-protection clause of the fourteenth amendment.

The argument is not impressive. We are aware of no constitutional provision which would invalidate an absolute rule of suspension for specified violations. Provisions for the suspension or revocation of drivers' licenses for specified violations of law are commonplace. And the fact that these provisions do not take into account the number of miles driven by the respective violators has not, so far as

we are aware, been thought to invalidate them. Plaintiff's argument does no more than underscore the wisdom of the authorized inquiry into the circumstances of the violations, an inquiry which the plaintiff elsewhere in its argument so vigorously attacks.

Plaintiff next argues that the *prima facie* test violates due process because an operator may be faced with the burden of defending against a succession of suspension proceedings involving identical violations. It is suggested that an operator who has ten or more violations during a twelve-month period may be found, in view of all the circum- [fol. 78] stances, not to have operated in habitual violation of the law. Upon further convictions for violation of the load limits during the same twelve-month period, a second action under section 132.02 might be instituted and might result in the suspension of such an operator's privilege. The second suspension proceeding is occasioned, however, by the operator's continued conduct, which results in additional violations. Since these additional convictions tend to cast new light on the overall character of his operations, a re-examination of the charge of habitual violation is justified, and in such a re-examination there is no deprivation of due process.

It is also contended that the statute is fatally unreasonable in that it permits inclusion, in the ten offenses which make up a *prima facie* case, of violations due to "axle overloads," which may have been unavoidable. The argument is based upon the fact that section 131 recognizes a category of "unavoidable" axle overloads which are punished by a nominal fine of one dollar. Apart from the fact that the complaint does not allege that any of the violations with which plaintiff is charged are of this character, the contention must fail. There is no basis for assuming that any court would refuse, in a suspension proceeding, to take into account a previous judicial determination that abnormal and unanticipated conditions made it impossible to prevent undue shifting of a particular load. Indeed, such a circumstance would seem to be peculiarly within the authorized scope of inquiry into the "character" of the violation.

It is said that the penalty of suspension of operating privileges is so disproportionate to the offense as to deprive the plaintiff of due process of law and to contravene sec-

tion 11 of article II of the constitution of Illinois which provides: "All penalties shall be proportioned to the nature of the offense * *." We do not agree. The State's continuing search for effective enforcement techniques to secure compliance with valid weight limits is apparent in the legislation dealing with the subject. (See: Act of July 9, 1935, secs. 132, 135, 137, Laws of 1935, p. 1281 ff.; Act of August 6, 1949, secs. 1, 2, 3, Laws of 1949, p. 1142; Act of August 10, 1949, secs. 132, 132.01, Laws of 1949, p. 1156; Act of August 6, 1951, sec. 132.01, Laws of 1951, p. 2090.) The General Assembly might infer that the truckers find the payment of statutory penalties when violation is established to be economically preferable to compliance. But the State is entitled to insist upon compliance [fol. 79] with its valid regulations, and to shape is penalties to that end. Considerations stemming from the commerce clause of the Federal constitution apart, we see no reason why the State may not restrict the privilege of using its highways for profit to those who comply with its laws. If, because of the peculiarities of a particular load, compliance would present inordinate difficulties, provision is made for a permit to exceed the statutory limits. Ill. Rev. Stat. 1951, chap. 95½, par. 230.

We think the sanction imposed here is not disproportionate to the offense. We have previously sustained acts which impose analogous auxiliary penalties such as the confiscation of a vehicle or prohibition of the use of a building, (*People* v. *Kawoleski*, 310 Ill. 498,) as well as acts imposing progressively severer penalties for repeated offenses. (*Kelly* v. *People*, 115 Ill. 583). *Chicago and Alton Railroad Co.* v. *People ex rel. Koerner*, 67 Ill. 11, on which plaintiff relies, is not authority to the contrary, for we recognized there the propriety of forfeiture in cases of successive violations.

Plaintiff's final contention is that the suspension provisions are invalid under the commerce clause and the supremacy clause of the Federal constitution. While it is conceded that the State has broad powers over the use of its highways in interstate commerce, it is argued that the power of the State does not include the suspension, even for a limited period of time, of the right to engage in interstate commerce, in the case of carriers who hold

certificates of convenience and necessity under the Federal Motor Carrier Act. Because the issue presented lies within a sensitive area of State and Federal relations, we have carefully examined the statute to be sure that it was intended to apply to interstate commerce. Its scope is fixed by the definition of "commercial vehicle operator's privilege" as "the privilege recognized or conferred by any law of this state * * * to operate * * * commercial vehicles * * * upon the public highways of this state." A privilege or right to operate motor vehicles for commercial purposes in interstate commerce is clearly recognized in other statutes. (Ill. Rev. Stat. 1951, chap. 95½, par. 220.13, par. 243.) From this fact, and from the fact that section 132.02 itself does not itself suggest any exemption of operators engaged in interstate commerce, we conclude that the suspension procedure was intended to apply to all [fol. 80] operators whether engaged in interstate or intrastate commerce.

So construing the statute, we meet the contention that the commerce and supremacy clauses of the Federal constitution prevent the State from suspending the right to use its highways in the case of an interstate trucker who operates pursuant to a certificate of convenience and necessity from the Interstate Commerce Commission. On this issue, we find no controlling authority which is precisely in point.

The power of the State over those who use its highways in interstate commerce is extensive. It may prescribe the maximum size and weight of vehicles engaged in interstate commerce, (*South Carolina State Highway Dept.* v. *Barnwell Bros.* 303 U.S. 177), it may regulate their design, (*Maurer* v. *Hamilton*, 309 U.S. 598,) and it may impose nondiscriminatory fees. (*Hendrick* v. *Maryland*, 235 U.S. 610; *Kane* v. *New Jersey*, 242 U.S. 160.) Before Federal regulation of interstate motor carriers became effective, the power of the States to suspend or revoke authority to engage in interstate commerce, as a sanction for the enforcement of State statutes regulating the use of the highways, was sustained. (*Welch Co.* v. *New Hampshire*, 306 U.S. 79; *Eichholz* v. *Public Service Com.* 306 U.S. 268; cf. *Detroit-Cincinnati Coach Line* v. *Public Utilities Com.* 119 Ohio St. 324, 164 N.E. 356.) More recently, State

statutes which provided for revocation as a means of enforcing the collection of taxes have been sustained without discussion of the propriety of the sanction. (*Aero Mayflower Transit Co.* v. *Board of Railroad Comrs.* 332 U.S. 495; *Capital Greyhound Lines* v. *Brice*, 339 U.S. 542.) In *Joyner* v. *Matthews*, 193 Va. 10, 68 S.E. 2d 127, the Virginia court upheld a statute which provided for suspension of the right to operate in interstate commerce for failure to pay amounts which had become due to the State by reason of violations of weight limits. The court noted, however, that suspension was there employed merely as a means of enforcing the payment of amounts due, saying, "So long as the violation is paid for at the rate fixed * * * he can continue to operate." 193 Va. at p. 15.

On the other hand, sanctions of the type here involved have frequently been invalidated under the commerce clause, even though the regulation to which the sanction attached was within the power of the State. So it has been held that payment of a tax otherwise valid may not be made a condition precedent to the right to carry on interstate business, [fol. 81] but that enforcement must be left to ordinary collection procedures. (*Western Union Telegraph Co.* v. *Massachusetts*, 125 U.S. 530.) Nor may nonpayment of an otherwise valid tax be made the basis of the forfeiture of a corporate franchise to engage in interstate commerce. (*St. Louis Southwestern Railway Co.* v. *Arkansas*, 235 U.S. 350.) In *Hill* v. *Florida*, 325 U.S. 538, a union business agent who failed to secure a license required by State law was enjoined from acting as a business agent. The court held that his right to act in that capacity was conferred by the National Labor Relations Act, and that the right so granted could not be obstructed by injunction or by penalty for acting without a license. "It is the sanction here imposed, and not the duty to report, which brings about a situation inconsistent with the federally protected process of collective bargaining." 325 U.S. 538, 543.

Both *Welch Co.* v. *New Hampshire*, 306 U.S. 79, and *Eichholz* v. *Public Service Com.* 306 U.S. 268, which, as noted, sustained sanctions by way of suspension or revocation in the field of highway regulation, strongly suggested that this power of the State would be superseded when the Federal Motor Vehicle Act became effective. (306 U.S. at

pp. 84 and 273.) The Supreme Court of Texas, in *Railroad Commission of Texas* v. *Querner*, 150 Tex. 490, 242 S.W. 2d 166, held that since control over this aspect of interstate commerce has been asserted by the Federal Motor Carrier Act, the sanction of revocation can not be applied to an interstate trucker for violation of a valid State statute, although the opinion intimates that a different rule might be applied if the violation related to public safety or damage to the highways.

None of these determinations appears to us to be conclusive. It is true that the statute here involved applies without discrimination to interstate and intrastate carriers, and that the conduct with which it is concerned, the regulation of load limits upon the highways, is a matter of vital local concern and one which Congress has left open to regulation by the States. On the other hand, Congress has legislated in this field "to the end of developing, coordinating and preserving a national transportation system of water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense." 54 Stat. 899, 49 U.S.C., note preceding sec. 301.

[fol. 82] Weighing the effect of the State action in this case against the announced purpose of Congress, we are of the opinion that the statute is invalid to the extent that it provides for suspension of the right to engage in interstate commerce upon the highways of the State. In the interest of establishing a national transportation system, the Federal government has granted the plaintiff the right to engage in commerce upon the highways of Illinois. That is the very right which is to be suspended under section 132.02. A Federal certificate of convenience and necessity to engage in interstate commerce does not, of course, imply immunity from the payment of taxes and other valid financial obligations. And so it may be that suspension for failure to meet obligations of that kind stands upon a different footing. But we do not see how an adequate national transportation system can be maintained if the comprehensive transportation network which it contemplates is to be subject to disruption by State suspension of operating rights for violation of load limits or other traffic regulations.

The fact that the federally granted right of an operator to engage in interstate commerce cannot be suspended does not, however, impair the validity of section 132.02 as applied to intrastate operations. The continuing power of the State over those operations is expressly recognized by Congress. (49 U.S.C. sec. 302(b).) The statute can operate effectively if its application is restricted to intrastate commerce. And even apart from the separability clause of the statute, (Ill. Rev. Stat. 1951, chap. 95½, par. 239,) section 132.02 itself indicates the intention of the General Assembly to exert the full measure of its constitutional power to secure compliance with its valid regulations.

It follows that the decree of the circuit court must be reversed, and the cause remanded, with directions to enter a decree in accordance with this opinion.

Reversed and remanded, with directions.

[1ols. 83-84] IN SUPREME COURT OF ILLINOIS

No. 32855

HAYES FREIGHT LINES, INC., Appellant

vs.

LATHAM CASTLE, Attorney General of the State of Illinois, and BASIL WILSON, State's Attorney of Marion County, Illinois, Appellees

JUDGMENT—January 20, 1954

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the decree aforesaid, there is manifest error

Therefore, it is considered by the Court that for that

error and others in the record and proceedings aforesaid the decree of the Circuit Court of Marion County in this behalf rendered, Be Reversed, Annulled, set aside and wholly for nothing esteemed, and this cause be remanded to the Circuit Court of Marion County with directions to enter a decree in accordance with the views expressed in the opinion attached to this mandate.

[fol. 85] In the Supreme Court of the State of Illinois

[Title omitted]

Order Staying Mandate—January 25, 1954

This matter coming on to be heard on motion of the defendants-appellees appearing by Latham Castle, Attorney General of the State of Illinois, and upon notice to counsel for the plaintiff-appellant, it is hereby ordered that the mandate of this court in the above entitled matter be stayed, pursuant to Title 28, section 2101 (f) United States Code, for a period of ninety days or until the Supreme Court of the United States has finally disposed of any petition or petitions for certiorari filed in said court or until further order of this court or a justice thereof.

(S.) Walter V. Schaefer, Chief Justice Supreme Court, State of Illinois.

Entered: In Chambers, January 25, 1954.

[fol. 86] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 87] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 697

LATHAM CASTLE, Attorney General of the State of Illinois, et al., Petitioners,

vs.

HAYES FREIGHT LINES, INC.

ORDER ALLOWING CERTIORARI—Filed June 7, 1954

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.